

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 10th day of August, two thousand and six.

PRESENT:

HON. RALPH K. WINTER,
HON. CHESTER J. STRAUB,
HON. ROBERT A. KATZMANN,
Circuit Judges.

Han Ying Zhu, Da Gao,
Petitioners,

-v.-

No. 05-5761-ag
NAC

Alberto R. Gonzales, Attorney General of the United States,
United States Department of Justice, Michael Chertoff,
Secretary of the Department of Homeland Security,
Department of Homeland Security,
Respondents.

FOR PETITIONERS: Douglas Payne, New York, New York.

FOR RESPONDENTS: R. Alexander Acosta, United States Attorney for the Southern District of Florida, Anne R. Schultz, Chief, Appellate Division, Emily M. Smachetti, Kathleen M. Salyer, Assistant United States Attorneys, Miami, Florida.

1 UPON DUE CONSIDERATION of this petition for review from the Board of
2 Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED that the
3 petition for review is DENIED.

4 Han Yin Zhu and Da Gao,¹ citizens of China, petition for review the BIA’s affirmance of
5 Immigration Judge (“IJ”) William F. Jankun’s denial of their claims for asylum, withholding of
6 removal and relief under the Convention Against Torture (“CAT”). We assume the parties’
7 familiarity with the underlying facts and procedural history of the case.

8 This Court reviews the IJ’s decision where, as here, the BIA summarily affirms the IJ’s
9 decision without opinion. *See Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005). This Court reviews
10 the agency’s factual findings, including adverse credibility determinations, under the substantial
11 evidence standard, treating them as “conclusive unless any reasonable adjudicator would be
12 compelled to conclude to the contrary.” 8 U.S.C. § 1252(b)(4)(B); *see, e.g., Zhou Yun Zhang v.*
13 *INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004). Nevertheless, “the fact that the [agency] has relied
14 primarily on credibility grounds in dismissing an asylum application cannot insulate the decision
15 from review.” *Ramsameachire v. Ashcroft*, 357 F.3d 169, 178 (2d Cir. 2004). An adverse
16 credibility determination must be based on “specific, cogent reasons” that “bear a legitimate
17 nexus” to the finding. *Secaida-Rosales v. INS*, 331 F.3d 297, 307 (2d Cir. 2003).

18 Zhu argues that the IJ’s decision to pretermitt her asylum application was arbitrary,
19 irrational, and capricious. Title 8, Section 1158(a)(3) of the United States Code, however,
20 provides that no court shall have jurisdiction to review the agency's finding that an asylum

¹Da Gao, Zhu’s son, is included as a derivative applicant on Zhu’s application for asylum and on the petition for review.

1 application was untimely under 8 U.S.C. § 1158(a)(2)(B), or its finding of neither changed nor
2 extraordinary circumstances excusing the untimeliness under 8 U.S.C. § 1158(a)(2)(D). While
3 the courts retain jurisdiction, under 8 U.S.C. § 1252(a)(2)(D), to review constitutional claims and
4 “questions of law,” the petitioner in this case has challenged only purely factual determinations
5 and the agency’s exercise of discretion. The Court therefore lacks jurisdiction to review the
6 agency’s denial of asylum. *See Joaquin-Porras v. Gonzales*, 435 F.3d 172, 178-80 (2d Cir.
7 2006).

8 The IJ reasonably denied Zhu’s withholding of removal claim based on her inability to
9 provide credible testimony and her failure to meet her burden of proof. The IJ determined that,
10 from the manner in which Zhu testified, he could not find that she was credible in testifying
11 before the Court. This Court gives particular deference to credibility determinations that are
12 based, like this one, on the adjudicator’s observation of the applicant’s demeanor. *See Zhou Yun*
13 *Zhang*, 386 F.3d at 73 (explaining that a fact-finder who assesses testimony together with
14 demeanor is in the best position to discern whether the witness is truthful).

15 Moreover, the IJ’s reliance on the U.S. State Department Profile to discredit Zhu’s
16 submission of an abortion certificate was reasonable. While “[t]he observations of State
17 Department country profiles ‘do not automatically discredit country condition evidence presented
18 by the applicant, and . . . are not binding on the immigration court[,] they are probative
19 nonetheless.’” *Tu Lin v. Gonzales*, 446 F.3d 395, 400 (2d Cir. 2006) (internal citations and
20 quotation marks omitted). The IJ did not err in finding the claim implausible based on such
21 evidence. *Id.* The omission of Zhu’s forcible abortion from her husband’s 1996 asylum claim,
22 by itself, might not be enough to affirm the IJ’s finding. However, the decision as a whole is

1 supported by substantial evidence.

2 Zhu has not meaningfully challenged the IJ's denial of her claim for CAT relief in her
3 brief to this Court. Issues not sufficiently argued in the briefs are considered waived and
4 normally will not be addressed on appeal. *See Yueqing Zhang v. Gonzales*, 426 F.3d 540, 542
5 n.1, 546 n.7 (2d Cir. 2005).

6 For the foregoing reasons, the petition for review is DENIED. The pending motion for a
7 stay of removal in this petition is DENIED as moot.

8
9 FOR THE COURT:

10 Roseann B. MacKechnie, Clerk

11 By: _____
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